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## WORLD ORDER IN AN AGE OF TRANSITION

**Instability of world order  
in a globalized environment**

To ensure the stability of global order is one of the main imperatives in the ever more complex framework of international relations brought about by globalization<sup>2</sup>, a process that is expressed in economic interdependence, civilizational interaction and the emergence of an information society that is often described with the metaphor of the “global village.”<sup>3</sup> How to achieve, under these circumstances, the goal of a stable system has become the basic challenge faced by the international community at the beginning of the 21st century. Stability requires rules that enable a just and balanced interplay of forces in all domains, whether political, economic or social. A transnational equilibrium in a comprehensive sense is indeed the *conditio sine qua non* for the maintenance of international peace and security as envisaged in the United Nations Charter.

After the collapse of the bipolar order of the Cold War towards the end of the last century, world order has entered a transitory phase that is characterized by the antagonism between unilateralist (hegemonic) and multilateral tendencies. It should not surprise us that, at the beginning of the 1990s, the only remaining superpower was tempted to exploit the new constellation – or to fill the power vacuum – for its own benefit. The repeated unilateral uses of force – whether *openly* (as in the cases of the interventions in Yugoslavia in 1999 and Iraq in 2003) or *de facto* (as in the cases of the 1991 Gulf war and the 2011 NATO war in Libya)<sup>4</sup> – have made that hegemonic project more than obvious and have seriously undermined the legitimacy of the United Nations Organization insofar as it is based on the international rule of law and a multilateral approach towards world order, especially in the domain of collective security (as set out in Chapter VII of the UN Charter).

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<sup>2</sup> On the multidimensional nature of globalization see: Köchler H. (ed.). *Globality versus Democracy? The Changing Nature of International Relations in the Era of Globalization*. (Studies in International Relations. Vol. XXV). Vienna: International Progress Organization, 2000.

<sup>3</sup> The term was originally coined by Marshall McLuhan in: *McLuhan M. Understanding Media: The Extensions of Man* [1964]. L.; N.Y.: Routledge Classics, 2009. P. 5. For details see the author’s analysis: *The New Social Media and the Changing Nature of Communication: Anthropological and Political Implications // News and Views: The Journal of the International Academy for Philosophy (New Series)*. 2012. Vol. 4, No 2–3 (32–33). P. 42–64.

<sup>4</sup> On the case of the use of force against Iraq in particular see the documentation of the International Progress Organization: *The Iraq Crisis and the United Nations: Power Politics vs the International Rule of Law. Memoranda and declarations of the International Progress Organization (1990–2003) // Studies in International Relations*. Vol. XXVIII. Vienna: International Progress Organization, 2004.

Parallel to these developments in the political and military (or geostrategic) fields, the sudden end of the Cold War’s power struggle along ideological lines has triggered a *new dynamic* in the process of globalization, since the flow of goods and information was freed from previous legal, political and ideological constraints (that were due to the competition and antagonism between the two power blocs). This process, however, has been characterized by an ever-widening imbalance in terms of the complexities of *economic interdependence* on the one hand and the *system of rules*, still in its incipient stage, that are required to ensure stability and fairness on the other. The financial crisis of 2008 and the resulting global economic instability, still not resolved as of today, testify to this predicament.

In the period that immediately followed the end of bipolarity, the traditional instruments of governance have proven to be more and more ineffective; they are not anymore sufficient to ensure the stability of world order. The norms of contemporary *international law* are mainly related to the interaction between nation-states on the basis of (sovereign) equality and essentially depend on *consensus* among the members of the international community, while the methods of collective security (on which the preservation of order will largely depend as long as there exists no “common legal space”) are still in a rudimentary stage and cover only certain areas and aspects of inter-state relations.

Under these circumstances, the efforts at ensuring a stable global order are faced with a double predicament (or paradox): (a) the international rule of law is supposed to be enforced without essential mechanisms of the law – because the UN Security Council acts within a framework of (power) politics, not as judicial arbiter<sup>5</sup>, and the International Court of Justice, part of the UN system, is not the constitutional court of the United Nations; (b) international peace and security are to be maintained in the absence of an effective transnational authority. The Security Council, in spite of its statutory powers, is not a global governing authority. Its effectiveness essentially depends on the consent among rivals for global influence (namely the Council’s permanent members). However, to resolve this problem of unified authority, a “world state” (which would require the “reinvention” of the United Nations as a supranational organization) is not a desirable goal if one is committed to the principles of democracy and national self-determination. The problematic experience, at the regional level, with the European Union is a case in point<sup>6</sup>.

**The precariousness of the international rule of law**

Apart from a few exceptional situations, the norms that govern inter-state relations do not meet the basic criterion that distinguishes a legal from a moral norm (in the sense of Hans Kelsen’s definition), namely, that violation of a norm

<sup>5</sup> On the role of the Security Council see, inter alia, Köchler H. *The Security Council as Administrator of Justice?* (Studies in International Relations. Vol. XXXII). Vienna: International Progress Organization, 2011.

<sup>6</sup> For the problems of democracy in the context of the aborted constitutional project of the EU see the author’s analysis: *The European Constitution and the Imperatives of Transnational Democracy // Singapore Yearbook of International Law*. 2005. Vol. IX. P. 87–101.

is linked to a specific sanction<sup>1</sup>. In most cases, abidance by the rules depends on the sovereign will of states. The jurisdiction of the International Court of Justice is mainly limited to legal disputes, which the member states refer to it, and depends on their voluntary recognition (which may be given conditionally and in a temporally limited way)<sup>2</sup>. The Court, thus, lacks compulsory jurisdiction and functions more as a “Court of Arbitration and Legal Advice.” A unified system of enforcement only exists in the field of *collective security*, and only in cases where the Security Council acts on the basis of Chapter VII of the UN Charter; and even in this area of international law enforcement, which certainly goes beyond mere appeals and exhortations, the “punishment” (i.e. the specific sanction e.g. in cases of the violation of the norm on the non-use of force) is regulated not on the basis of exclusively judicial criteria, but according to the rationale of power politics. Article 27 of the Charter provides that decisions on coercive measures depend on the consent of the Council’s permanent members<sup>3</sup>. The wars against Yugoslavia (1999) and Iraq (2003) have drastically illustrated the rudimentary nature of international law in this regard since the world organization was incapable to restrain the aggressor states.

It goes without saying that another basic requirement of the rule of law, namely a functional, not merely formal, separation of powers, does not exist in the framework of inter-state relations. The “international rule of law,” thus, should be seen as an *ideal*, an imperative of practical reason, in the direction of which the community of states should develop its norms of co-operation and its commitment to the common good of mankind (which, in the era of global interconnectedness, ultimately means the survival of the human race, especially as regards the threats from nuclear war and environmental risks). It is obvious that a *balance of power* at the global level – whether bipolar or multipolar – will be more conducive to this ideal than a unipolar constellation.

#### Global co-ordination among equals (“governance”)

Similarly, the mechanisms for the co-ordination of policies (regionally as well as globally) in the political, social and economic fields – which are frequently described as elements of “global governance” – are not expressions of governmental authority in the strict sense since that would require compulsory action on the basis of laws. The management of global processes, often vaguely described as “governance,” essentially depends on regulations that result from treaties or agreements between sovereign states or other actors – *without* the interference of a global government. The United Nations Organization does not belong in that category – in spite of the vast powers of the Security Council that are anyway mitigated by the veto rule. As with the traditional system of international law, the essential characteristic of this kind of “governance” is a *horizon-*

*tal* relationship between equal actors (whereby equality is understood in the normative, not factual sense)<sup>4</sup>, not a *vertical* relationship between superior (sovereign) and subordinate (subject). This is, in essence, the nature of *inter-governmental* organization. “Governance” should thus be understood in a metaphorical sense, namely as a form of management of common global problems, undertaken by states on the basis of partnership and mutual interest, i.e. in the spirit of co-operation among equals. Only in specific regional frameworks where there exists a certain degree of socio-cultural and political homogeneity – that has allowed the emergence of specific intergovernmental and partly supranational structures – may “governance” resemble methods of government and governmental authority (i.e. executive authority based on laws) in the strict sense (as is the case with the decision-making procedures of the European Union, albeit those are more and more questioned in terms of democracy and national sovereignty)<sup>5</sup>.

#### Where to go from here? World order and a multipolar balance of power

In view of the rudimentary forms of transnational co-operation that characterize today’s international order, the basic challenge before the global community (which is not identical with the Western-dominated and ideologically defined “international community”) is a further *evolution*, or refinement, of the regulatory mechanisms identified as the “international rule of law” on the one hand and the co-ordination procedures related to collective security on the other<sup>6</sup> – with the “strategic” aim of bolstering the development towards a genuine multipolar balance of power. Of utmost importance will be a *comprehensive* and *consistent* network of consensus-based rules and regulations that integrates the political and economic areas of transnational interaction. Only such a system will prevent anarchy and provide protection against arbitrary uses of power and privilege, making it more difficult for individual actors – or a single power claiming global hegemonial status – to exploit the volatility of a transitory constellation, such as the present one, according to the old hegemonic maxim of *divide et impera*.

As far as the international rule of law and the primordial role of the United Nations Organization are concerned, enforcement mechanisms in the field of peace and security will gradually have to be adapted to the evolving multipolar structure. *Democratic reform* of the world organization will be an essential step in that direction since such a process will help it to overcome the imbalances in the Charter that are due to the perpetuation of the post-war power constellation of 1945<sup>7</sup>. These imbalances are even more acute when a unipolar power constellation makes the checks and balances among the Security Council’s permanent members

<sup>4</sup> According to the notion of “sovereign equality” of all member states introduced in Art. 2(1) of the UN Charter.

<sup>5</sup> For details see also the author’s analysis: Köchler H. Decision-making Procedures of the European Institutions and Democratic Legitimacy: How Can Democratic Citizenship be Exercised at Transnational Level? // Concepts of democratic citizenship. Strasbourg: Council of Europe Publishing, 2000. P. 147–165.

<sup>6</sup> As set out in Chapter VII of the United Nations Charter.

<sup>7</sup> See also the proposals of the Second International Conference On A More Democratic United Nations (CAMDUN-2): The United Nations and the New World Order: Keynote addresses from the Second International Conference On A More Democratic United Nations // Studies in International Relations. Vol. XVIII. Vienna: International Progress Organization, 1992.

<sup>1</sup> Pure Theory of Law [Reine Rechtslehre: Einleitung in die rechtswissenschaftliche Problematik, 1934]. Trans. Max Knight. Union, N.J.: Lawbook Exchange, 2000.

<sup>2</sup> Art. 36 of the Statute of the International Court of Justice established by the Charter of the United Nations.

<sup>3</sup> For details see: Köchler H. The Voting Procedure in the United Nations Security Council: Examining a Normative Contradiction and its Consequences on International Relations // Studies in International Relations. Vol. XVII. Vienna: International Progress Organization, 1991.

less effective, at times even dysfunctional<sup>1</sup>. Special priority should be given, in that regard, to a more even representation of the *global regions* or the respective regional organizations where they exist (possibly in combination with provisions for *weighted voting*<sup>2</sup>).

### The special case of international criminal justice

Steps in other fields such as that of international criminal justice (with the problematic notion of universal jurisdiction) will have to be undertaken with great care so that the development towards a multipolar order (that must be based on genuine multilateralism in terms not only of legal, but also of political, economic and social interaction) will not be obstructed or even reversed. If the International Criminal Court (ICC) ever were to provide an alternative to the often politicized and legally questionable jurisdiction of *ad hoc* courts (such as those created by the Security Council, on the basis of Chapter VII of the UN Charter, after the end of the Cold War)<sup>3</sup>, its composition – i.e. the group of State Parties – should be actually representative of the international community. This is certainly not yet the case since three out of the five permanent members of the Security Council (China, Russia, United States) have not acceded to the Rome Statute of the International Criminal Court. (The United States and Russia, who originally signed the treaty, have in the meantime made clear that they exclude the possibility to ratify the Statute in the future.) Other major military powers such as India, Turkey or Israel are also not State Parties. However, in the prosecution of international crimes (war crimes, genocide, crimes against humanity, crime of aggression), there must be no selectivity in prosecution (which, at the present moment, inevitably results from the incomplete ratification). Double standards, even if resulting from the ratification status, i.e. the structure of membership, delegitimize the Court as an instrument enforcing respect of international law and, subsequently, contributing to a peaceful and stable world order. There is no justice with duplicity<sup>4</sup>. In view of this, and in particular because of an ever more obvious prosecutorial bias (with the Prosecutor often acting under political considerations), an increasing number of State Parties (especially from Africa) has made clear their intention to leave the Court. The ratification status of the Rome Statute is indeed at the roots of the Court's "structural dilemma." Because of its limited membership, the ICC can effectively do nothing about the application of *double standards* in the prosecution of international crimes, one of the most decisive factors under-

mining the international rule of law. Thus, under the pervasive influence of traditional power politics, the International Criminal Court cannot become a credible, and constructive, agent of a just world order.

### Need for a multidimensional and integrated approach

As regards the evolution of global "governance," not government, with the overriding goal of horizontal co-ordination of policies among states, including among the newly emerging global regions (as represented e.g. by the European Union, Eurasian Union, African Union, Association of Southeast Asian Nations), the development of a more comprehensive framework of rules for international economic and financial exchange as well as of communication and information will be of paramount importance. The time may have come to revisit the earlier proposals of the United Nations Organization and Unesco, hastily abandoned under pressure from powerful lobbies in the era of the ideological conflicts of the Cold War, for the establishment of a New International Economic Order<sup>5</sup> and a New International Information Order<sup>6</sup> respectively. In the economic field, the ongoing global crisis – that still has the potential of a systemic collapse – has certainly demonstrated that policies, which are exclusively based on the paradigms of neoliberalism, are in no way able to ensure a stable and balanced development.

It will be one of the main challenges for contemporary international relations theory to demonstrate how to reconcile the *stability* of world order with the notion of sovereign *equality*. The approach advocated by us is *realistic* – in the sense of paying attention to the necessity of correcting the actual imbalances, instead of ignoring them or trying to do away with them merely through normative proclamations or a self-righteous humanitarian posture. A multipolar constellation on the basis of genuine partnership, not a unitary world state, is the desirable outcome of reforms of the system of international relations in the era of globalization. Traditional power politics – history's "struggle for power" among rivals that only emphasize self-interest – has to be transformed towards new methods of "partnership among powers" where each of the actors, in their well-understood self-interest, pays attention to the global common good on the basis of *mutuality*. This can only be achieved through a *reinterpretation* and *adaptation* of the paradigms of "rule of law" and "governance" to the requirements of multipolarity.

A first step in this direction is also contemplated by Zbigniew Brzezinski who – departing from the earlier perception of an imperial role of the United States<sup>7</sup> – advocates a new "global realignment"<sup>8</sup> – instead of rivalry – among three major global powers (United States, Russia, China), suggesting, in particular, that the United States

<sup>1</sup> On the details of and avenues towards democratic reform see also the author's analysis: *Köchler H.* The Democratization of the United Nations Organization: Ideal versus Real // Human Rights, Human Security, and State Security / S. Takahashi (ed.). The Intersection. Ser. "Praeger Security International". Santa Barbara (CA); Denver (CO); Oxford (UK): Praeger / ABC-CLIO, 2014. Vol. 3. Chapter 3. P. 63–90.

<sup>2</sup> See the earlier proposal: *Newcombe H., Wert J., Newcombe A.* Comparison of Weighted Voting Formulas for the United Nations: Preprint. Dundas (Ont.): Peace Research Institute, 1970.

<sup>3</sup> International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991 (1993); International Criminal Tribunal for Rwanda (1994).

<sup>4</sup> On the problems of international criminal justice in the context of the global power constellation see: *Köchler H.* Global Justice or Global Revenge? International Criminal Justice at the Crossroads: Philosophical Reflections on the Principles of the International Legal Order Published on the Occasion of the Thirtieth Anniversary of the Foundation of the International Progress Organization. Vienna; N.Y.: Springer, 2003.

<sup>5</sup> For details see the proceedings of the 1979 experts' conference of the International Progress Organization: The New International Economic Order: Philosophical and Socio-cultural Implications // Studies in International Relations. Guildford (England): Guildford Educational Press, 1980. Vol. III.

<sup>6</sup> For details see the conference report of the International Progress Organization: The New International Information and Communication Order: Basis for Cultural Dialogue and Peaceful Coexistence among Nations // Studies in International Relations. Vienna: Braumüller, 1985. Vol. X.

<sup>7</sup> The Grand Chessboard: American Primacy and Its Geostrategic Imperatives. N.Y.: Basic Books, 1997; The Choice: Global Domination or Global Leadership. N.Y.: Basic Books, 2004.

<sup>8</sup> Toward a Global Realignment // The American Interest. 2016. T. 11, No 6. P. 1–3.

should accept at least one of the other two states as “a partner in the quest for regional and then wider global stability.”<sup>1</sup> In the emerging multipolar order, this kind of great power partnership has indeed become an “imperative of prudence” – in view of the catastrophic disintegration of order in the wider Middle East, in fact a collapse of the post-World War I state system, and the resulting global threat of terrorism<sup>2</sup>.

In this period of transition from unipolarity towards multipolarity, all measures contemplated here will have to be oriented towards securing a state of durable peace – what earlier (in the bipolar era) has been characterized as “peaceful co-existence.” At the same time, we shall have

to be aware of the conceptual *contradictions* in both, the notions of “international rule of law” and “global governance,” especially in terms of collective security. In the absence of a world state as supranational entity – which we do not advocate because of the implications in terms of sovereign equality and self-determination, neither of the two paradigms can be transferred statically, or one-dimensionally, from the conceptual framework of the sovereign nation-state (with its hierarchical structure of law enforcement) to the ever more complex system of interdependence between a multitude of states; but they can serve as guidelines – “regulative ideas” in the Kantian sense – for the building of a more just and peaceful world.

<sup>1</sup> Toward a Global Realignment... P. 3.

<sup>2</sup> “...A prolonged phase of sustained ethnic, quasi-religious wars pursued through the Middle East with self-righteous fanaticism would generate escalating bloodshed within and outside the region, and growing cruelty everywhere.” See: *Brzezinski Z.* Toward a Global Realignment. URL: <http://www.the-american-interest.com/2016/04/17/toward-a-global-realignment>